

REMARKS

Applicant appreciates the Examiner's thorough review of the application. Reconsideration and allowance of all claims are requested.

The claims have been amended to more clearly define the scope of the invention. Support for the amendments may be found at, for example, FIG. 1; FIG. 2; p. 6, ll. 4 - 15; p. 9, ll. 3 - 22; and p. 27, ll. 1- 10. No new matter has been added by the amendments. Claims 9 - 11 are cancelled without prejudice.

Claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable under 35 U.S.C. 102(e) over Herman (U.S. Publication No. 2002/0035489).

Claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable over Herman. Reconsideration and withdrawal of the rejection are requested.

Herman teaches a system for alleviating risk associated with actual mortality rates differing from predicted mortality rates through use of a mortality guarantee. Herman at paragraph 0035. A re-insurer 112 is liable if insufficient death benefits are paid during a given year. Herman at paragraph 0035. Herman is concerned with reducing the default risk to the Lender 108 by Foundation 102 by employing a re-insurer 112. Herman at paragraph 0035.

Independent claims 1, 18, 19 and 20 are not anticipated by Herman because Herman lacks the elements of the independent claims.

For example, Herman does not disclose selectively grouping one or more insurance policies based upon actuarial matrices or formulas as required by the claims. In contrast, Herman teaches away from selectively grouping insurance policies. Herman instead groups together individual supporters of a foundation "in one or more blocks and insurance policies are taken out on the group for the benefit of the foundation." Herman at paragraph 0022.

Herman teaches that systems, such as the present invention, that rely on taking "life insurance policies out on a particular portion of their membership" and/or selective grouping of life

insurance policies based on whether members are "more likely to die" as "determined by actuarial tables" are not compatible with the invention of Herman. See Herman at paragraph 0005. Herman considers such systems to have a "large degree of uncertainty". Herman at paragraph 0005. Herman continues by stating that "it may be desirable to have a life insurance policy finding technique that generates revenue with a higher degree of certainty without the drawbacks of [systems selectively grouping based upon actuarial tables]". Herman at paragraph 0006.

Applicant selects from a portion of a membership to create a customized, selected group of insurance policies that meet particular standards. Specification at p. 9, ll. 12 - 14. Applicant's invention uses actuarial tables and/or formulas to select and group insureds of all ages that meet particular desirable standards in particular situations. Specification at p. 9, ll. 12 - 14. Applicant's invention, therefore, takes "life insurance policies out on a particular portion of their membership" in contrast to the express teachings of Herman. Thus, Applicant's invention cannot be anticipated by Herman.

Furthermore, independent claims 1, 18, 19 and 20 have been further amended to specify that the selective grouping of insurance policies generates a variable net cash flow after the payment of premiums determined by factors selected from the group consisting of ages of the selected individuals, mortality rate of the selected individuals, investment performance of the financial instrument, guarantees of an insurance company, and combinations thereof. Support for the amendments may be found at, for example, Specification p. 6, ll. 4 - 15. No new matter has been added by the amendments.

Herman does not teach a variable net cash flow as required by the claims. In contrast, Herman teaches removing uncertainties in net cash flow through a re-insurer to provide a consistent, predetermined net cash flow. Herman teaches a "mortality guarantee" from the re-insurer 112 such that the re-insurer 112 is liable to make up a short coming in death benefits if fewer individuals die in a given year than predicted. Herman at paragraph 0035. Herman does this to provide "long term financial planning and the ability to make payments to Lender 108" based upon "a certain amount of death benefits being paid each year over the course of a loan period". Herman at paragraph 0035.

Applicant's invention as claimed operates in the opposite manner by having a variable net cash flow. Applicant's invention does not remove uncertainty by providing set payments at set times. Instead, Applicant's invention matches future liabilities by having a variable net cash flow based upon, among other factors, ages of insured individuals, mortality rates, investment performance and guarantees. Therefore, if there are fewer mortalities in a given period, those payments are deferred to a later date providing the ability of the owner of the financial instrument to cover future liabilities. If the insured individuals live longer under Applicant's invention, then the insurance fund will also last longer. This is the opposite of Herman.

Herman removes uncertainty from fund generation methods by utilizing re-insurers and providing consistent, predetermined net cash flows. Applicant's invention, as claimed, requires variable net cash flows based upon ages of the selected individuals, mortality rate of the selected individuals, investment performance of the financial instrument, guarantees of an insurance company, and combinations thereof. Therefore, Herman does not teach every element of the claims and cannot anticipate the present claims.

Dependent claims 2 - 5, 7 - 8 and 12 - 17 depend from independent claim 1 and add further patentable features to the patentable features of independent claim 1. Dependent claims 21 - 24 depend from independent claim 20 and add further patentable features of independent claim 20.

Therefore, claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable over Herman for at least these reasons. Reconsideration and withdrawal of the rejection are requested.

Claims 6 and 21 are patentable under 35 U.S.C. 103(a) over Herman (U.S. Publication No. 2002/0035489).

Claims 6 and 21 are patentable over Herman. Reconsideration and withdrawal of the rejection are requested.

The Office Action does not provide evidentiary support showing that "a call option to acquire the financial instrument from the passive vehicle" is "old and well known in the investment world" as asserted on page 6. The Office Action does not provide evidentiary support showing that

one of ordinary skill in the art at the time of the invention would have been motivated to go into an agreement to buy the financial instrument at a specified price within a specified time for higher potential return as asserted on pages 6 - 7 of the Office Action. Appropriate evidence is requested.

Furthermore, independent claims 1 and 20 are patentable over Herman as described above. Dependent claims 6 and 21 depend from independent claims 1 and 20, respectively, and add further patentable features to the patentable features of independent claims 1 and 20, respectively.

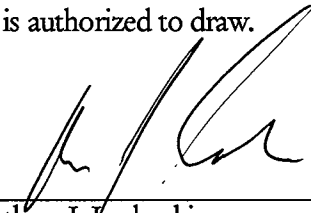
Therefore, claims 6 and 21 are patentable over Herman for at least these reasons. Reconsideration and withdrawal of the rejection are requested.

CONCLUSION

Applicant believes the application is now in condition for allowance. Reconsideration and withdrawal of the rejections are requested.

Applicant believes no additional fee is required with this response. If additional fees are required, the U.S. Patent and Trademark Office is authorized to charge any additional fees that may be required in conjunction with this submission to Deposit Account Number 50-2228, under Order No. 020874.0101C1US from which the undersigned is authorized to draw.

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